

NII.8326

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

TERRENCE J. FOREMAN

§

Plaintiff,

§

v.

§ **CIVIL ACTION NO. 3:17-cv-756**

**JOHN DOE DRIVER and
MABE TRUCKING CO., INC.,**

§ **JURY DEMAND**

Defendants.

§

**DEFENDANT MABE TRUCKING COMPANY, INC.'S
NOTICE OF REMOVAL**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, **MABE TRUCKING COMPANY, INC.**, a Defendant in the above matter (hereinafter “Defendant”), and files this Notice of Removal of the above-captioned case. Removal is based on 28 U.S.C. § 1332 (diversity jurisdiction) and is authorized by 28 U.S.C. §§ 1441 and 1446.

**I.
BACKGROUND**

1. Plaintiff filed his Original Petition on February 15, 2017, claims against Defendant related to an alleged accident that occurred in Dallas County, Texas.

2. Defendant was served with Plaintiff’s Original Petition on February 24, 2017.

3. Defendant has filed this Notice of Removal within the time period required.

28 U.S.C. §1446(b).

4. Plaintiff is a resident of and domiciled in Mesquite, Dallas County, Texas.

5. Defendant is a duly registered North Carolina corporation with its corporate office and principal place of business in Eden, North Carolina.

6. Plaintiff's Original Petition, filed contemporaneously herewith, seeks "monetary damages over \$100,000.00 but not more than \$200,000.00, including damages, of any kind, penalties, costs, pre-judgment interest, and attorney fees."

II.
BASIS FOR REMOVAL

8. Removal is proper under 28 U.S.C. § 1332(a) because Plaintiff's suit is a civil action in which this Court has original jurisdiction over the parties, based upon diversity jurisdiction under 28 U.S.C. § 1332. This action is removable to this Court pursuant to the provisions of 28 U.S.C. §1441(b) because Plaintiff is a citizen and domiciled in the State of Texas and Defendant is a North Carolina corporation with its principal place of business being in Eden, North Carolina.

A. Complete Diversity Exists.

8. For diversity purposes, a person is considered a citizen of the state where that person is domiciled. Plaintiff is a person living in and domiciled in Texas. Defendant is incorporated in North Carolina and maintains its principal place of business in the state of North Carolina.

9. 28 U.S.C. § 1446(b)(3) states that, "except as provided in subsection (c), if the case stated by the initial pleading is not removable, a notice of removal may be filed within 30 days after receipt by the defendant, through service or otherwise, of a copy of an amended

pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.”¹

10. The Defendant is now, and was at the time the removed action was commenced, diverse in citizenship from the Plaintiff. 28 U.S.C. § 1332.

11. Because the Plaintiff and Defendant to this suit do not share citizenship in any state, removal is proper on diversity grounds.

12. Accordingly, because this notice of removal has been filed within thirty days after Defendant’s receipt of Plaintiff’s Original Petition, this removal is proper and timely under 28 U.S.C. §1446(b).

B. The Amount in Controversy Exceeds \$75,000.00.

13. Further, as set forth in Plaintiff’s Original Petition, filed with these pleadings here today, the amount in controversy in this action exceeds, exclusive of interest and costs, the sum of Seventy Five Thousand and No/100 Dollars (\$75,000.00). Thus, the amount in controversy meets the threshold for removal.

14. The United States District Court for the Northern District of Texas, Dallas Division, embraces Dallas County, Texas.

15. The live pleadings before the state court are Plaintiff Terrence J. Foreman’s Original Petition and Defendant Mabe Trucking Co., Inc.’s Original Answer. No motions are pending before the state court.

16. All pleadings, process, orders, and other filings in the state court action are attached to this Notice as **Exhibit “A,”** as required by 28 U.S.C. § 1446(a).

¹ 28 U.S.C. § 1446(b)(3).

17. After filing this Notice of Removal, Defendant will promptly file a copy of this Notice with the clerk of the state court in which the action is pending.

WHEREFORE, PREMISES CONSIDERED, Defendant **MABE TRUCKING CO., INC.**, as a party in diversity with the Plaintiff **TERRENCE J. FOREMAN**, respectfully requests that this action be immediately and entirely removed upon filing of this Notice of Removal to the United States District Court for the Northern District of Texas, Dallas Division, and for such other and further relief to which it may show themselves to be justly entitled in equity or law.

Respectfully submitted,

FEE, SMITH, SHARP & VITULLO, L.L.P.

/s/Michael P. Sharp

MICHAEL P. SHARP

State Bar No. 00788857

msharp@feesmith.com

ADAM J. STRANGE

State Bar No. 24090763

astrange@feesmith.com

Three Galleria Tower

13155 Noel Road, Suite 1000

Dallas, TX 75240

(972) 934-9100

(972) 934-9200 (Fax)

**ATTORNEYS FOR DEFENDANT MABE
TRUCKING CO., INC.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 15, 2017, the foregoing Notice of Removal was filed with the Clerk of the Court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to all attorneys of record who have consented in writing to accept this Notice as service of documents by electronic means.

Larry Rolle
Rolle, Breeland & Wingler
2030 Main Street, Suite 200
Dallas, Texas 75201

/s/Michael P. Sharp

MICHAEL P. SHARP